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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
MCI WORLDCOM, INC.	)	
	)	
Petition for Expedited Declaratory Ruling Regarding the Process for Adoption of Agreements Pursuant to Section 252(i) Communications Act and Section 51.809 of the Commission's Rules	)	CC Docket No. 00-4

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY OF GTE

GTE Service Corporation and its affiliated domestic communications companies[1] ("GTE") respectfully submit their reply to the comments regarding the above-captioned Petition. The record makes clear that MCI WorldCom's request for Commission-mandated, nationwide procedures for implementing 252(i) agreements is procedurally improper, inconsistent with the Act and the Commission's Rules, and unnecessary.

I. INTRODUCTION

GTE supports expeditious implementation of agreements adopted under section 252(i), whether the requesting carrier chooses to opt into a pre-existing agreement in its entirety or to exercise its "pick and choose" rights. Indeed, GTE's CLEC affiliate, GTE Communications Corporation, has successfully entered into numerous

[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of

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agreements under section 252(i). Moreover, following consummation of the GTE/Bell Atlantic merger, Verizon will actively compete in out-of-region local exchange markets, and consequently will seek rapid implementation of interconnection arrangements with ILECs throughout the country.

At the same time, however, the 252(i) process must result in enforceable agreements that ILECs can accurately implement. Under the Act and the Commission's Rules, the ILEC also must have the ability to discontinue stale agreements and to challenge proposed adoptions that are technically or economically untenable. In addition, section 252 requires state PUCs to consider whether adopted agreements (particularly in the pick-and-choose context) are nondiscriminatory and serve the public interest.

MCI WorldCom's requested relief would run roughshod over the rights of ILECs and states, for no good reason. As the comments of numerous state PUCs make clear, state regulators are promoting local competition through a variety of processes for giving expedited effect to adopted agreements. While some CLECs gripe about individual disputes with particular ILECs (including three specific allegations against GTE, which are baseless), there is no evidence of a pervasive problem that must be remedied through intrusive federal intervention. The comments supporting the Petition are long on rhetoric – such as AT&T's fanciful claim that ILECs have "succeeded in

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the South, Inc.

marginalizing 252(i)"[2] – but short on reality, particularly in light of the thousands of currently effective agreements that have resulted from adoptions under 252(i).

II. MCI WORLDCOM'S PETITION SHOULD BE DENIED.

There is no basis under the Act, the Commission's rules, or sound public policy for granting MCI WorldCom's petition.[3]

The relief sought cannot be granted in the context of a declaratory ruling. Even if there were merit to MCI WorldCom's request, which there is not, the relief sought is not the interpretation or clarification of existing rules, but rather the adoption of new rules.[4] Consequently, as the Wisconsin PSC explains, "MCI's resort to a declaratory ruling proceeding is an inappropriate remedy."[5] Not only is there no controversy or uncertainty to resolve – the sole basis for a declaratory ruling[6] – but the requested relief would "create more uncertainty by hamstringing state processes designed to

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[2] AT&T at 2. References to parties' filings relate to the comments filed in this docket on March 31, 2000, unless otherwise indicated.

[3] There is likewise no basis for supplementing the relief sought by the Petition, such as AirTouch Paging's request (at 15) that the ILEC prove by "clear and convincing evidence" that the costs of serving an adopting carrier differ on an element-by-element basis. State PUCs are well-equipped to address the type of showings that will be found persuasive under Rule 51.809(b).

[4] As SBC points out (at 10-12), MCI WorldCom bases its request in large part on an assertion that Rule 51.809(a) requires ILECs to effect an adoption "without delay" – conveniently omitting the word "unreasonable" that actually appears in that rule section. That omission undermines any basis for arguing that MCI WorldCom's request is a clarification rather than an alteration of existing requirements.

[5] Wisconsin PSC at 2; *see also* SBC at 10-17.

[6] 47 C.F.R. § 1.2; 5 U.S.C. § 554(d).

address, under authority of §§ 252(e)(3) and 252(g), state-law concerns relating to every interconnection agreement."[7]

Even if a declaratory ruling were procedurally appropriate, the Petition seeks to solve a nonexistent problem. As numerous state PUCs demonstrate, there is no justification for the kind of intrusive federal rules that MCI WorldCom seeks:

- "The KCC disagrees with MCI's claim that there is a need to establish national uniformity for approval of an election to opt into a previously approved interconnection agreement. ... It does not make sense that state commissions which are responsible for enforcement of agreements and for resolving disputes that arise in connection with interconnection agreements should not also have the authority to put in place procedures for approving and administering such elections."[8]

- "Notwithstanding our support for an expedited adoption process, the [Puerto Rico Telecommunications Regulatory] Board does not believe that MCIW's Petition should be granted. We do not believe, first, that the FCC should attempt to usurp state commission authority over the approval of interconnection agreements. ... Second, the record at this point simply does not justify such an extension of federal power."[9]

Notably, every state commission that filed supports expedited procedures to handle adoption of agreements under 252(i),[10] and none indicates that there is a widespread problem with delayed implementation of adopted agreements. If there

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[7] Wisconsin PSC at 3.

[8] Kansas Corporation Commission at 3-4.

[9] Telecommunications Regulatory Board of Puerto Rico at 3.

[10] *See* Washington Utilities and Transportation Commission at 2 (noting that it has adopted a 252(i) Interpretive and Policy Statement); Public Utility Commission of Texas at 1-2; Wisconsin Public Service Commission at 3; Oklahoma Corporation Commission at 2; New York Department of Public Service at 1; Kansas Corporation Commission at 2-3; Indiana Utility Regulatory Commission at Att. A (General Administrative Order 2000-1, which establishes procedures to "expedite review of interconnection agreements and amendments thereto").

were truly a problem implementing 252(i), the state PUCs would know. After all, they are the parties entrusted by the Act with assuring that interconnection negotiations proceed rapidly and smoothly, and as such, they are the parties that must deal with CLEC allegations that an ILEC is not negotiating in good faith. Moreover, the states are capable of, and committed to, assuring that CLECs wishing to adopt agreements or exercise their pick-and-choose rights under 252(i) can do so "without unreasonable delay," as required by the Commission's Rules. No further action by the FCC is required.

In contrast, the CLECs supporting MCI WorldCom argue, with much passion but no support, that ILECs seek to frustrate every effort by a CLEC to opt into an existing agreement or exercise pick and choose rights. Perhaps the most extreme example comes from AT&T, which suggests that ILECs have "succe[eded] in marginalizing § 252(i) for the past four years," due in part to "confusion on the part of state commissions ...."[11] This dark rhetoric cannot withstand the bright light of reality: GTE alone already has entered into more than 400 adoptions with CLECs under 252(i), and the number of 252(i) adoptions nationwide must number well into the thousands.

The few allegations that GTE has interfered with the exercise of CLECs' 252(i) rights are baseless. Three parties, Voice Stream, Global NAPS/Universal Telecom, and AT&T, allege that GTE has impeded their ability to adopt in their entirety or pick and choose from existing agreements. These claims are wrong on the facts, the law, or both.

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[11] AT&T at 2.

VoiceStream contends that GTE "as a matter of policy declines to make an adopted, previously approved agreement effective for the adopting carrier prior to Commission approval," citing a case before the Washington UTC.[12] In reality, GTE's general policy is to make adoptions effective upon filing of GTE's standard adoption letter with the state commission. In Washington, however, GTE has been required to file a new agreement with the adopting carrier's name substituted for the original underlying CLEC. The Washington UTC treats the adoption as a new interconnection agreement, which is why it does not take effect until it is approved.[13]

Global NAPS/Universal Telecom asserts that GTE declines to make available for adoption terms that have been interpreted to require payment of compensation for ISP-bound traffic, even when a carrier seeks to adopt an agreement in its entirety.[14] This is correct, but GTE's actions are consistent with the Commission's policies and section 51.809(b) of the Rules.

Under the Commission's 1999 *Reciprocal Compensation Order*, state PUCs are required to consider the intent of the parties in determining whether compensation must be paid for ISP-bound traffic.[15] GTE's adoption letter includes language making clear

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[12] VoiceStream at 5-6.

[13] *See also* Washington UTC at 2 ("The WUTC believes that carriers are required by section 252(e) of the Act to submit all interconnection agreements to state commissions for approval.") The Washington UTC has amended its policy and interpretive statement to provide that, if no objection is received within 15 days of the date an adoption notice is filed with the commission, the request for adoption will be effective automatically on the sixteenth day after filing.

[14] Global NAPS/Universal Telecom at 5.

[15] *Implementation of the Local Competition Provisions in the Telecommunications Act of*

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GTE's intent that such compensation not be paid, given that the underlying agreement did not contemplate compensation for ISP-bound traffic and that CLECs acting as fronts for ISPs generate a tremendous traffic imbalance. In addition, GTE is well within its rights under Rule 51.809(b), which permits GTE to deny an adoption request based on increased cost of performance. It would cost considerably more for GTE to perform the terms of the underlying agreement for an adopting CLEC that seeks compensation for terminating ISP-bound traffic at the local interconnection terminating compensation rate. Moreover, the costs incurred by the adopting CLEC for passing on ISP-bound traffic are lower than the termination costs for truly local traffic. Under those circumstances, GTE properly is unwilling to pay the same compensation. Under section 252(d), termination charges must reflect the terminating carrier's costs.[16]

AT&T states that, in the adoption context, "GTE takes the position that such housekeeping matters as changing the names of those who receive notices under the agreement ... trigger renegotiation of the agreement."[17] This claim is made in the context of a specific transaction in California involving MediaOne (which did not file comments in its own right). In reality, MediaOne wanted GTE to change the CLEC name on the GTE/Time Warner agreement to MediaOne and sign it as a newly negotiated agreement under section 252(a) – not section 252(i). GTE declined

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1996, Inter-Carrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999), *vacated*, *Bell Atlantic v. FCC*, No. 99-1094 (D.C. Cir. March 24, 2000).

[16] *See* 47 U.S.C. § 252(d)(2)(A).

[17] AT&T at 5-6.

because it would not have negotiated the same agreement under 252(a); various aspects of its interconnection policies had changed since the negotiation with Time Warner took place. Had MediaOne chosen to exercise its 252(i) rights, it could have done so, but for its own reasons, it opted to proceed under a different section of the Act.

MCI WorldCom's Petition disregards the need for PUC review of pick-and-choose agreements. Several state PUCs point out that they have a statutory obligation to assure that agreements reached through exercise of a CLEC's pick-and-choose rights are consistent with the public interest. WorldCom's requested relief would impair the states' ability to discharge that responsibility. As the New York DPS explains:

> [A]n agreement created by mixing and matching individual provisions from various agreements is not the equivalent of an agreement that has been adopted as a whole. The state commission therefore must be allowed to assure itself that the new agreement is in the public interest. Moreover, an agreement that mixes provisions of other agreements is a new agreement, not previously authorized, and therefore requires commission review. (Section 252(e)). The 1996 Act requires state commissions to act on these expeditiously, and state commissions do not cause undue delay.[18]

Similarly, the Wisconsin PSC cautions that:

> [MCI] fails to distinguish between the differing situations of adopting a previously-approved interconnection agreement in its entirety, on the one hand, and, on the other, adopting portions of such an agreement. The latter may fall short of even creating a functional, coherent contract. Adopting only portions of a prior agreement, however, can significantly alter the total balance of contract considerations. ... [C]urrent state negotiation and arbitration processes are, in fact, the most economical and timely means of assuring a fully workable interconnection agreement (including state law compliance) ... where "adoption" is partial in nature.[19]

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[18] New York Department of Public Service at 2 (footnote omitted).

[19] Wisconsin PSC at 3; *see also* Washington UTC at 3 ("[S]tate commissions should (Continued...)

For these reasons, the portion of MCI WorldCom's petition that would essentially deny state commissions the authority carefully to review pick-and-choose agreements violates section 252 of the Act.[20]

The Petition would unduly narrow ILECs' right to limit the time during which existing agreements must be made available. As GTE explained in its Opposition, the Petition indefensibly concludes that ILECs may not raise, and states may not consider, claims under Rule 51.809(c) that the "reasonable period of time" during which an agreement must be made available for adoption has expired. No party supporting the Petition has provided any independent legal basis for arguing that Rule 51.809(c) is limited to objections based on increased cost or technical feasibility; nor is any such argument tenable. Objections based on cost and technical feasibility already are covered by Rule 51.809(b), so limiting subsection (c) as demanded by MCI WorldCom and its supporters would impermissibly deprive that provision of any independent

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review such [pick-and-choose] agreements pursuant to section 252(e)(2)(A) to ensure that the resulting agreement does not discriminate against any other carrier and is not inconsistent with the public interest, convenience, and necessity. In addition, the state commissions' approval of such agreements will allow other carriers to adopt them, which achieves the purpose of section 252(i) of the Act.").

[20] MCI WorldCom's request that adoption requests take effect upon the CLEC's filing of an adoption notice should likewise be denied. In its Opposition (at 4), GTE showed that permitting agreements that are adopted in their entirety to be effective immediately upon the CLEC's provision of notice would be operationally impractical, since certain changes are needed to any agreement to assure proper interconnection arrangements, billing, and inter-party notifications. *See also* Oklahoma Corporation at 5; SBC at 17-21; Bell Atlantic at 1-4; BellSouth at 3-4. There is no indication in the record that the brief time taken to make these changes amounts to "unreasonable delay" in the effectiveness of an adopted agreement, rendering MCI WorldCom's petition meritless
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meaning. Rule 51.809(c) is there for an important reason – to prevent a 252(i) daisy chain that would force ILECs to keep agreements alive long after the original agreement has expired. ILECs must have the ability to limit adoptions into agreements that will soon expire.[21]

For these reasons, and those expressed in GTE's Opposition, the Commission should deny MCI WorldCom's petition.

Respectfully submitted,

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in this regard as well.

[21] *See* GTE at 5-7; SBC at 27-31; Bell Atlantic at 5; U S WEST at 6-8.

CERTIFICATE OF SERVICE

I, Robin Walker, hereby certify that on this 11th day of April , 2000, I caused copies of the foregoing Reply of GTE to be sent via hand-delivery to:

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